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NEY *v.* HAUN.

Nov. 17, 1921.

[109 S. E. 438.]

1. **Carriers (§ 4*)—Truck Driver Transporting Goods between Two Cities Not a Common Carrier in Transporting Goods to Third City in One Instance.**—Truck driver engaged in the transfer business in a certain place under license, but not licensed to engage in such business in another city and not pursuing the business of carrying goods over a route from such other city to a third city, and never having held himself out as undertaking to carry goods for the public generally between them, did not, in undertaking to transport goods between such places in a particular instance, assume the liability of a common carrier.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 673.]

2. **Carriers (§ 4*)—"Common Carrier" Defined.**—To constitute a person a common carrier of goods in a particular instance the carriage in question must be over a route or within a territory over or within which there has been a general undertaking by the person, a holding of himself out as undertaking to carry goods for the public generally, as a business, over that route or within that territory, which undertaking may be either express or may be implied from conduct by a series of acts by known habitual continuance in such line of business.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Common Carrier. For other cases, see 2 Va.-W. Va. Enc. Dig. 673.]

Error to Circuit Court Rockingham County.

Action by Ferdinand Ney against Joseph H. Haun. Judgment for defendant, and plaintiff brings error. Affirmed.

Chas. A. Hammer, of Harrisonburg, for plaintiff in error.

H. W. Wyant, of Harrisonburg, for defendant in error.

TALBOTT *v.* SOUTHERN SEMINARY, Inc.

Nov. 17, 1921.

[109 S. E. 440.]

1. **Innkeepers (§ 13*)—"Ordinary" and "Boarding House," within Lien Statute, Distinguished.**—In the statutes from which Code 1919, § 6444, was taken, giving a lien to the proprietor of an inn, ordinary, or boarding house, the term "ordinary" means a public house where food and lodging were furnished to the traveler and his beast, at fixed

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

rates, open to whoever might apply for accommodation, and where intoxicating liquor was sold at retail; while "boarding house" was a place of private entertainment, where special contracts were usually made.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Boarding House; Ordinary.]

2. Innkeepers (§ 13*)—"Boarding House" and "House of Private Entertainment" in Lien Statute Are Synonymous.—Within Code 1919, § 6444, giving the keeper of an inn, boarding house, or house of private entertainment a lien on the property of guests therein, which as originally enacted and as last amended before codification had no comma between "boarding house" and "house of private entertainment," those terms were intended to be synonymous.

3. Innkeepers (§ 13*)—Boarding School Is Not "Boarding House" within Lien Statute.—A corporation authorized to conduct a boarding school is not the keeper of a boarding house within Code 1919, § 6444, giving the keeper of a boarding house a lien on the property of guests therein, so that such school cannot claim a lien upon the trunks of students therein.

Error to Corporation Court of Buena Vista.

Action in detinue by A. L. Talbott against the Southern Seminary, Inc. Judgment for defendant, and plaintiff brings error. Reversed.

H. S. Rucker, of Buena Vista, for plaintiff in error.

Jno. Dabney Smith, of Buena Vista, for defendant in error.

WITHROW'S EX'X et al. v. PORTER.

Nov. 17, 1921.

[109 S. E. 441.]

1. Ejectment (§ 119 (2*))—Equitable Defense, Good in Ejectment, May Be Basis for Injunction against Enforcement.—Even if a contract of purchase is an equitable defense to ejectment, permitted under Code 1919, §§ 5471, 5472, that fact does not preclude a bill to restrain the enforcement of the judgment in ejectment under the express provision of section 5473.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 874, et seq.]

2. Ejectment (§ 119 (2*))—Demurrer Held Not to Attack Bill for Want of Equity.—On a bill to restrain enforcement of a judgment in ejectment, a demurrer on the ground that the subject matter in controversy had been settled by a judgment at law is not sufficient to put complainant on notice that defendants intended to claim that the

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